

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAMEN D. RABB,

Plaintiff,

v.

ESTEVEN FIGUEROA, et al.,

Defendants.

No. 1:23-cv-00843-JLT-SAB (PC)

ORDER DIRECTING CLERK OF COURT TO  
RETURN PROPOSED FIRST AMENDED  
COMPLAINT LODGED ON FEBRUARY 5,  
2024 TO PLAINTIFF

(ECF No. 28)

Plaintiff Isaiah J. Petillo is appearing pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On August 28, 2023, Defendants Chavez and Figueroa filed an answer to Plaintiff's complaint. (ECF No. 16.)

On October 30, 2023, the Court issued an amended discovery and scheduling order, setting the deadline to amend the pleading as January 30, 2024. (ECF No. 27.)

Currently before the Court is Plaintiff's first amended complaint which was lodged by the Court on February 5, 2024. (ECF No. 28.)

A plaintiff may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. L.R. 137(c). Because Defendants have already answered the

1 complaint, Rule 15(a)(2) of the Federal Rules of Civil Procedure govern whether plaintiff may  
2 amend. Under Rule 15(a)(2), “a party may amend its pleading only with the opposing party’s  
3 written consent or the court’s leave” and the “court should freely give leave when justice so  
4 requires.” However, a “district court does not err in denying leave to amend where the  
5 amendment would be futile.” Saul v. United States, 928 F.2d 829, 843 (9th Cir. 1991). Further,  
6 leave to amend may be denied where “undue prejudice to the opposing party” would result.  
7 Moore v. Kayport Package Express, 885 F.2d 531, 538 (9th Cir. 1989).

8 Here, Plaintiff did not request nor obtain leave of the Court to file a first amended  
9 complaint, and the filing of the first amended complaint was improper. In addition, the Court’s  
10 discovery and scheduling provides for a deadline to amend the pleadings, but does not afford the  
11 automatic right to amend the pleadings. Thus, although leave to amend should be freely given  
12 when justice so requires, it appears Plaintiff made no attempt to obtain Defendants’ consent or the  
13 Court’s permission through a motion to amend prior to lodging his first amended complaint.  
14 Accordingly, the Clerk of Court shall return the first amended complaint lodged on February 5,  
15 2024 to Plaintiff. (ECF No. 28.)

16  
17 IT IS SO ORDERED.

18 Dated: **February 8, 2024**

  
UNITED STATES MAGISTRATE JUDGE